

## Remarks

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Reconsideration is requested. Claims 28-35 are presented.

Applicant's arguments presented below focus on certain patentable differences between the invention as claimed and the applied references. However, it is not to be inferred that the failure to argue all differences between the claimed subject matter and the applied references constitutes acceptance of assertions made in the Office Action of alleged similarities between elements of the claimed subject matter and the applied references.

Rejections under 35 U.S.C. 103:

Claims 28-35 are rejected under 35 U.S.C. 103 as being unpatentable over Kowaguchi (U.S. Patent No. 6,201,973) in view of Steer (U.S. Patent No. 6,201,973). This rejection is respectfully traversed.

**Re: claim 28**

Claim 28 defines the first signal as conveying that the one of the one or more designated geographical areas comprises an area of high communication traffic. It was acknowledged in the Office Action that Kowaguchi did not teach that the one or more designated geographical areas comprised one or more high traffic areas. The newly cited prior art, Steer, is relied upon to provide this teaching. In the Office Action it is stated:

"Steer teaches where one or more designated geographical areas comprise one or more high traffic areas (column 7, lines 56-62, where given a broad interpretation, a 'high traffic area' comprises a 'highway')".

It is appreciated that the Examiner is entitled to make a "reasonably broad" interpretation of the terms used in the claims. The Examiner's interpretation suggested in the above quote is believed to go beyond the scope of permitted interpretation. However, in an effort to constructively resolve prosecution of the subject application, the subject "area" is now more specifically focused to define an area of high communication traffic, as opposed to vehicular

traffic on a highway; the latter being suggested by Steer at column 7, lines 56-62. Since neither Kowaguchi, Steer, nor the combination thereof, provide a teaching of an area of high communication traffic as utilized in the context of claim 28, withdrawal of the 35 U.S.C. 103 rejection is requested.

Claim 28 recites that the mobile communication device receives, and then stores, signals from a supporting exchange were the signals contained predetermined locations for one or more designated geographical areas. That is, the designated geographical areas stored in the mobile are received as signals from the supporting exchange. Regarding this limitation, it is stated on page 2 of the Office Action that Kowaguchi teaches storing in a mobile communication device designated geographical areas with a citation to specific sections of Kowaguchi. Even if applicant were to accept this position, it does not satisfy the stated limitation of receiving signals from a supporting exchange that contained predetermined designated geographical areas. Applicant has reviewed the teachings of Kowaguchi especially with regard to the transmission inhibition area table 216 and has found no teaching that the contents of table 216 were obtained from signals received by the mobile. There is nothing about the presence of information in table 216 that would inherently require that such information in the table have been obtained from signals received by the mobile from a supporting exchange.

"To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.'" *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) MPEP 2112.  
(Underscore emphasis added.)

The information contained in table 216 could have been resident in the mobile at the time the mobile was initially acquired by the user from a service provider. Alternatively, the table 216 could be contained in an EEPROM or other type of programmable memory that could be inserted into the mobile. In any event, there is nothing inherent about the presence of information in table 216 that would require that this information have been derived from signals received by the mobile from a supporting exchange. In accordance with *In re*

*Robertson*, the mere fact that a thing or event may result from a given set of circumstances is not sufficient. Hence, Kowaguchi cannot be relied upon as providing *prima facie* basis for this limitation. Because Steer was not relied upon as teaching this limitation, the withdrawal of the 35 U.S.C. 103 rejection is requested.

**Claim 30** is believed to be allowable for reasons explained above with regard to claim 28.

If a telephone conference would be of assistance in advancing the prosecution of this application, the Examiner is invited to call applicants' attorney at 630-584-9206.

Respectfully submitted,



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